

The International Institute for Middle-East and Balkan Studies (**IFIMES**) in Ljubljana, Slovenia, regularly analyses events in the Middle East and the Balkans. **Anže Voh Boštic**, B.Sc. Political Sciences and postgraduate student at Faculty of Economy, University of Ljubljana has analyzed Slovenian - Croatian border dispute, with a special emphasis on the political perspective. His article "**Slovenian - Croatian Border Dispute: A Political Perspective**" is published in its entirety.



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SLOVENIAN - CROATIAN BORDER DISPUTE: A POLITICAL PERSPECTIVE

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INTRODUCITON

Slovenian – Croatian border dispute is seemingly becoming a defining moment for Slovenian diplomacy and foreign policy in general. Slovenian intellectuals, as well as top Slovenian politicians are fully engaged into debate of how to resolve the dispute, and the dispute as such is seen as a test of defending national interests, as well as a historic opportunity for Slovenian foreign policy to assert itself in the international arena.¹ However, the almost exclusively debated pretext is legal aspect of the dispute, while political is, except for very general statements, hidden from the public eye. That is, to some extent, logical. Since the process is still in its unresolved stage, the detail political information is often highly sensible and could damage the positions of both countries. This could be the reason why Slovenian politicians that are currently in

¹ See for example opinions (just to name most recent ones) of president of Slovenian Society for International Relations Kunič (2009), who stresses that Slovenian diplomacy should do its job and convince other key people in international society to reach the decision in our favor, prime minister Pahor (2009) who stresses that the signing of arbitration agreement is a historical achievement, and opposition Janša (2009) who stresses that resolving Slovenian-Croatian border dispute is in the top national interest.

ruling positions do not wish to publicly discuss the subject matter. What is more surprising is the silence of opposition politicians and especially academics.

Not diminishing the importance of the legal aspect of conflict, the purpose of this essay is to analyze the object, as well as the course of the dispute and its implications, from the political perspective. The article will thus analyze the course and the object of dispute on the basis of negotiation and conflict-resolution theories, and the conflict implications for Slovenia and Croatia. With that, it strives to offer objective understanding of the conflict and to indicate possible solutions. Since the dispute has now escalated to the point where Slovenia is threatening with a referendum on accession of Croatia into the EU, I believe that such understanding is needed more than ever, in order to resolve the conflict satisfactory for both parties.

THE COURSE OF THE PROCESS

Slovenian-Croatian border dispute is dragging on virtually from Slovenia's independence.² At first, conflict was flared up only occasionally when Croatian fishermen came into the administrative waters of Slovenia in Piran bay³ and were there usually met with Slovenian police boat, also with Croatian police often engaged in the incident. The first crucial point in the dispute came with signing of the so-called Drnovšek-Račan agreement. Surprisingly, the agreement was ratified by Slovenian parliament, but not by Croatian. The agreement addressed all the key issues in the conflict: the demarcation of Piran bay, Slovenia access to international waters, status of four villages, situated on disputed land territory by the river Dragonja and preservation of Croatian border with Italy. However, the so-called "back-channel" or closed-for-public negotiations between Slovenian and Croatian prime minister failed to mobilize favorable broader political public opinion to the agreement in Croatia. According to Wanis-st. John⁴ such top-level secret negotiations can be successful at early stages of negotiating an agreement, however, when agreement in principle is reached, both sides need to carefully and gradually include the public into the process, in order to ensure wide support and thus later acceptance of the agreement in the home country. On Slovenian side, Prime Minister Drnovšek had been able to gain broader support of the political elites and broader public quite fast, and Slovenian parliament subsequently ratified the agreement, while Croatian Prime Minister Račan was not able to get support of his coalition government, nor the broader public opinion. The aftermath was a failed negotiation process, loss of credibility, and perhaps the most crucial development for events that we are witnessing today, the strengthening of the so-called spoilers. Spoilers are people or

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² I do not wish to present the fact about the dispute or legal aspect, but only to analyze key occurrences in the course, for those not familiar with the dispute, see factual and legal analysis of Avbelj and Letnar Čerňič (2007) as a pre-reading of this article.

³ Since the independence, Slovenian police controls the whole Piran bay except for 278 meters wide strip of sea along Croatian coast of the bay (Avbelj and Letnar Čerňič 2007, 16).

⁴ Wanis-st. John (2006)

interest groups that *a priori* oppose an agreement, and when negotiations fail their voice gains power. After refusal of Croatian parliament to ratify the agreement, accusations that he was acting in breach of constitution were directed towards Račan from political leaders, opposed to the agreement. Here also has to be noted that Slovenia was not compassionate towards Račan's problems with gaining support – instead of giving him more time and acting discreetly, Slovenian politicians and authorities were acting as if the agreement is already in force.⁵

The governments of both countries had to change in order to give the process another try. First, for appeasement purposes, the Declaration of avoidance of incidents (Izjava o izogibanju incidentov) that aimed at preventing before mentioned fisherman incidents in Piran bay that had a potential of escalation, was signed in summer 2005.⁶ In summer 2007, then Slovenian Prime Minister Janša and his Croatian counterpart Sanader, both members of oppositional parties at the time of failure of Drnovšek-Račan agreement, had reached an agreement in principle that the dispute will be resolved at the International Court of Justice.⁷ However, next year, the regime change occurred in Slovenia and the new government could not reach agreement with Croatian counterparts about some other conditions, namely whether ICJ should in its deliberations include the *ex aequo et bono* principle.

The event that had the biggest implications for the current situation was Slovenian blockade of the pre-accession talks between Croatia and the EU in December 2008. The blockade occurred because Croatia had included in its negotiation documentations certain clauses that could serve as a legal prejudice of border setting on the disputed land and sea territories. The blockade was a relatively unforeseen escalation of conflict that was now growing out of local dimensions. No one has until now seriously implied that Croatia had put the controversial clauses in the documents intentionally, so the event might be seen as the unintentional last push that was needed in order to flare up the conflict's political dimension. After the event, the conflict is more than ever before developing in accordance with *structural change model* of escalation. The model, developed by Pruitt and Rubin⁸, argues that "conflict, and the tactics used to pursue it, produce *residues* in the form of changes in the parties and the communities to which the parties belong". There are three groups of structural changes: psychological changes, changes in groups and collectives and changes in the community surrounding the parties.

As regards psychological changes, it is distinct that the party on the other side becomes seen as self-centered, morally unfit or even a diabolical enemy. Of course, Slovenia does not see Croatia as diabolical, nor vice-versa is true; however, attitudes

⁵ Zelnik 2004, 58–9: Slovenian police boats were driving croatian fishermen from would-be Slovenian territorial waters (according to Drnovšek-Račan agreement).

⁶ Ministrstvo za zunanje zadeve (2005)

⁷ RTVSLO (2007)

⁸ Pruitt & Rubin (1985)

are shifting and in our particular case, the other side is more often than not blamed for stalemates (for example, parties directly blamed each other for not being “constructive” when different EU proposals for solution were not accepted either by one or the other side). Also, emotions are flaring up – politicians in Croatia angrily emphasize that they will not “sell” Croatian territory for entering the EU, while Slovenian politicians see Croatia as bad-behaved child that does not want to adhere to what they see as their legitimate demands. As regards the zero-sum thinking, another characteristic of psychological change, it is gaining on force. The predominant conviction (from Slovenian point of view)⁹ is either we get the bay and sea that will allow us to access international waters, or they do, while the other opinions (such as condominium) are dismissed on both sides. Also, there is no empathy: legitimacy of Croatian acts and demands has until now not been seriously discussed. Fear of small losses is present and has come thus far that even grammar formulations in the arbitration agreement are being discussed.¹⁰ At the collective level, changes are seen in the form of emergence of extreme actors in both parties in conflict or mild actors taking more extreme positions. In Slovenia, some “hawkish” leaders of different initiatives are now regularly included in public debates, and top politicians are now willing to resort to such radical measures as referendum. As regards the polarization in broader community, previously uninterested third parties, such as legal academics are now joining the discussion, not only as professionals but also in a role of taking-sides public opinion-makers.¹¹

Understanding the course of the conflict, especially developments after Slovenian blockade and consequences of those developments is important for solving the conflict. As it was shown, current tense situation is a consequence of a “natural” escalation of conflict that happens if the conflict is not properly addressed, and not a consequence of unwillingness of one or the other party. Understanding this is extremely important for changing the view of the other party, since this frees the actors of negative perceptions and enables them to direct their energy into finding suitable solution. However, to find a suitable solution, one needs to analyze the object of dispute.

THE OBJECT OF THE DISPUTE

The object of the dispute, namely the disputed areas are of course well known. However the interests behind the parties or, better to say, the reasons, upon which the interests were formed, are not. The importance of those reasons is paramount, since one does not want to get into a situation, described with a well-known “orange”

⁹ At this point, I have to recognise that most of my arguments will be based on examples, derived from Slovenian actions, since I am, because i am Slovenian, more familiar with the attitudes towards the conflict here than in Croatia.

¹⁰ It is discussed whether the word »junction«, written in the agreement means actual connection of Slovenian territory ar only access that allows free passage.

¹¹ See for example Dnevnik (2009)

example.¹² The example tells of two children that quarreled over an orange. They have agreed to divide the fruit in half. The first child then ate its half and threw the peel away, while the other threw away the edible part and used the peel to bake a cake. Could something similar be said about the reasons behind Croatian and Slovenian interests?

If we transform all the disputed areas into smaller “sub-disputes”, one could argue that there exist four interconnected sub-disputes: Slovenia’s junction with the international waters, control of Piran bay, preservation of direct border between Croatia and Italy and the question of River Dragonja and the four villages on the disputed land territory. As regards the first sub-object of dispute, Slovenia’s junction with international waters, the arguments of Slovenia is that this is vital national interest, while Croatia sees it as giving away its own territory. However, reason why this junction is so important for Slovenia has up to date not been clearly rendered. If this is undisturbed operation of the port of Luka Koper, than this does not stand, while UNCLOS convention assures innocent passage of ships through territorial waters of another country. Of course, the other country could in practice not take heed of this provision;¹³ however this is again based on the before discussed adversary perception of the other party, based on the structural change. Also, if this should happen, Slovenia can legitimately evoke the breach of Copenhagen Criteria¹⁴ in the point where EU candidate country must meet the political criteria of the rule of law, and after Croatia’s accession into the EU other, even stricter mechanisms. Moreover, if Slovenia had agreed to solve the dispute in front of the ICJ, the analyses state that the most likely decision would have been condominium (co-ownership) of at least one part of the Piran bay so that it would ensure the junction of Slovenian territorial waters with international waters¹⁵, which is even higher assurance for Slovenia that the operation of Luka Koper will be undisturbed.

The second sub-object of dispute is actual control of Piran bay. Slovenia’s argument is that its control Piran bay is preservation of sea for the well-being of local inhabitants and development of tourism. As regards the first part that comprises mainly of fishery rights, EU member states have delegated their rights to the EU, and fishing quotas are now determined on a supranational level.¹⁶ That means that control over the Piran bay by either side would not make any difference after Croatia’s accession in EU. Development of tourism is also not hindered, as long as both countries are committed to preserving the environment, and neither side has until now proved otherwise. Perhaps also because of this fact, the question of control of Piran bay is now a bit less publicly discussed as the question of junction.

¹² See Fisher, Ury & Patton (1981, 57)

¹³ Avbelj & Letnar Čerňič (2007, 17)

¹⁴ See Europa Glossary: Accession Criteria (Copenhagen Criteria)

¹⁵ See for example Avbelj & Letnar Čerňič (2007, 18), Sheppard (2009)

¹⁶ Avbelj & Letnar Čerňič (2007, 18)

The third sub-object of the dispute is preservation of direct border between Italy and Croatia. The preservation of this border is important for Croatia from the legal perspective: retaining the border legally ensures Croatia a status of being a party to the Treaty of Osimo¹⁷ and with that the political benefits that stem from the Treaty, such as compensations for former inhabitants of Free Territory of Trieste, minority protection and other benefits.¹⁸ In Drnovšek-Račan agreement, the solution was a creation of small triangle of Croatian territorial waters adjacent to Italian territorial waters in the bay – a very clever and creative solution, based on identifying interest of both countries behind the object of dispute and then solving it in a way that pleased them both. Also, condominium would provide for the continuation of Croatian-Italian border.

Last sub-object is land territory along the river Dragonja and four villages that are situated on that strip of land. Since Slovenia has as a part of the Drnovšek-Račan agreement been willing to trade the territory with Croatia in exchange for getting almost whole Piran bay and access to international waters, one may conclude that obtaining this territory is not the top priority for Slovenia. In Drnovšek-Račan agreement, it was agreed that for the well-being of locals in these villages, double citizenship will be offered to them, however, even that will not matter anymore once Croatia enters the EU.

As follows from the analysis above, all interests behind the four sub-objects in the dispute except for the fourth one can be solved through the condominium solution, and none of them seems to be in the “vital interest” of one or another country, as long as those two countries abide to the principles of already existing international law. However, the conflict still is not solved, and the protraction of the conflict has negative consequences for both countries.

CONFLICT IMPLICATIONS

Of course, some implications of conflict are already clearly visible, especially as regards Croatia. Freezing of accession negotiations of Croatia with the EU was of course a setback for the country, one that may have even partly contributed to stepping down of Prime Minister Ivo Sanader. However, there also exist not so easy tractable and measurable implications, on national as well as international level. As regards the former, diverting attention of public in both countries from important political and socio-economic themes that need to be addressed and broadly supported in the society, especially in the current economic situation, towards the border dispute, does not serve for the benefit of the people. Thus, top politicians of

¹⁷ Treaty, signed in 1975 between Former Republic of Yugoslavia and Italy that among others divided Free Territory of Trieste, however it also contains some important provisions for countries that border Italy (successors of the Treaty).

¹⁸ Mladina (2009)

both countries should focus their energy and time for other, more pressing problems of their country. Even though this may to some extent look like a populist argument, not dealing with internal economic problems and instead diverting its attention only at the field of foreign policy is supposed to be one of the reasons for eventual fall Račan's government.¹⁹ In Slovenia, these internal implications, at least as regards changes at top political level, are not so visible; however, protracted dispute could be one of the reasons for decreasing public approval of the current government. Also, it contributes to further polarization in society which is, at has been shown above, further hindering the solution of the problem and is ensuring for continuation of its spiral mode.

It was also often argued that both countries are losing reputation in the international community. However, both countries are, according to Sasha Baillie's analysis of how can small states pursue their goal and make strength out of their perceived weakness, also losing its influence in international community. According to Baillie, small state must, among others, resort to coalition-building tactics, keeping low profile in multinational negotiations (especially in EU) and attract attention only when its vital interest is at stake, and playing a honest broker in negotiations between other, greater powers in international community.²⁰

As regards the first tactic, country must always strive for establishing friendly relations with other small states in order to gather greater leverage behind those goals that are shared with other small countries. Disputes such as discussed one do not exactly help maintaining such friendly relations and are hindering coalition-building in other areas, since such disputes assure for overall degradation of trust between countries. Since Slovenia and Croatia are otherwise economically and geographically interconnected and thus share a vast array of common interests, such a dispute can be even more damaging to both countries.

Since a small country risks that it will be overheard if it raises its voice too often since it does not have enough power to affect big changes in relationships in the international community, and is thus not important to appease it, small country has to choose the moments where and when it will raise its voice very carefully. It has to save such hard line performance only when its national interests are truly at stake, in order to ensure that it will gain attention of other countries. Raising its voice too many times for trivial matters will, on the other hand, assure for not being taken seriously by other countries. In this respect, it could be said that Slovenia and Croatia are misusing their limited powers at convincing the EU and the whole international community that their vital interests are at stake in the dispute.

¹⁹ Zelnik (2004, 57)

²⁰ Baillie (2009, 202–205)

Honest broker is the third tactics, with which small state can gain influence. That means that it will be playing a role of in-between link between great powers in negotiation. It will either facilitate the meeting or even draft proposals and thus be actively involved in the process. The role of honest broker assures the small state of the central position in the interaction process, at the very source of information, and can thus to some extent influence actions of bigger countries. From that point of view, the Bush-Putin meeting in Slovenia was a huge success for Slovenian diplomacy. Also, foreign politics of Scandinavian countries is based on this principle, and their mediators are well known. One of them (Marti Ahtissari, Nobel peace prize winner for its mediation efforts) was even briefly proposed as a mediator in the discussed dispute. However, big powers will only accept small country as honest broker if the country advertises conflict-avoidance stance and practice and willingness to cooperate in the international community. The dispute is thus eroding the perception of Slovenia and Croatia as conflict-avoidance countries, and is with that also it is eroding their power in the international community.

CONCLUSION

The key goal of both countries in the dispute should not be not how to get the whole disputed territory under one or the other's control, but how to achieve de-escalation of conflict, intelligent analysis of interests behind the objects of conflict and how to maintain or reestablish their international credibility. Even if an unlikely event happens and one county wins in every aspect of the dispute and other loses, this would still be a Pyrric victory. One of the main negotiation principles is that confrontational problem-solving can only be successful (and even that even only in some cases) when one is dealing with one-time adversary, and not with a counterpart with whom it will still have to cohabitate and cooperate in the future, since such confrontational problem-solving will most likely tainted the relationship for a longer time.

There exist two options for solving the conflict in an appeasing way. One is delegation of the dispute to a higher authority, and the other is solving the problem between them. As regards the first one, it can be tricky, as it can be well seen on the discussed example. Since more tribunals exist, many countries fall into the trap of "forum-shopping", i.e. trying to delegate the case to such a tribunal, for which they perceive it will be most favorable to them. In the past, Slovenia had proposed that the dispute should be delegated to OSCE tribunal, while Croatia had preferred the tribunal in Hamburg. They finally agreed for ICJ, however, that did not go through since Slovenia was trying to reach more favorable judgment (in their perception) with including the *ex aequo et bono* principle. In such complicated cases, negotiation literature proposes that solution should be based on "objective principles". Since ICJ is most experienced with solving territorial disputes, this seems as objectively the best place for the resolution of the conflict, even if Croatia refuses the inclusion of *ex aequo et bono* principle into deliberations of judges. Also, both countries would be

able to present the ICJ judgment as “objective” and thus neither of them would blame or resent the other for losses. Case for solving the dispute in front of ICJ is even stronger if the most likely judgment, that is condominium, is taken into an account. However, if the countries decide to try to solve the dispute between them once more, they should not forget the principles of Back-channel conflict solving and do everything that is in their power to appease public and present it with rational arguments instead of passionate rhetoric or one that is too focused on the legal aspect, and limit possible spoilers. I think that everyone can agree that smooth and quick resolution of the conflict is in the top interest of both countries.

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Ljubljana, 28 December 2009

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